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9

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 BRUCE BELL and  
MONTEZ DAY,

16 Defendants.  
17  
18

No. 2:99-cr-00123-AHM

GOVERNMENT'S OPPOSITION TO  
DEFENDANT MONTEZ DAY'S EX PARTE  
APPLICATION TO TERMINATE  
SUPERVISED RELEASE

19  
20 **A. THE COURT HAS DISCRETION TO TERMINATE DEFENDANT'S  
SUPERVISED RELEASE**

21 The Court may "terminate supervised release . . . at any time  
22 after the expiration of one year of supervised release," pursuant to  
23 Federal Rule of Criminal Procedure 32.1(c), "if it is satisfied that  
24 such action is warranted by the conduct of the defendant released  
25 and the interest of justice." 18 U.S.C. § 3583(e)(1). The Court  
26 may deny defendant's ex parte application to terminate supervised  
27 release without holding a hearing, as such a ruling would not result  
28 in the modification of supervised release. But if the Court were

1 inclined to grant defendant's request, it would have to hold a  
2 hearing first. Fed. R. Crim. Pro. 32.1(c)(1) ("Before modifying the  
3 conditions of probation or supervised release, the court must hold a  
4 hearing . . .")

5 **B. DEFENDANT'S REHABILITATION IS COMMENDABLE, BUT DOES NOT**  
6 **WARRANT EARLY TERMINATION OF SUPERVISED RELEASE**

7 Government counsel communicated with defendant's probation  
8 officer, Thomas Hardy, who corroborated the information defendant  
9 put in his motion and supported defendant's request for early  
10 termination of supervised release. The government agrees that while  
11 on supervised release, defendant has behaved well, which is to his  
12 credit. Nonetheless, the government opposes early termination of  
13 supervised release.

14 Defendant has a long history of violent behavior, and with  
15 firearms. Defendant was last sentenced as a career offender for an  
16 armed takeover bank robbery involving handguns. In fleeing from the  
17 police, defendant drove the getaway SUV at speeds of 70-90 mph  
18 through stop signs and red lights, including by an occupied school.  
19 (PSR ¶ 16.) After running a red light at 40 mph, defendant struck a  
20 minivan, causing it to strike a third vehicle, resulting in injuries  
21 to occupants of both, including a trip to the hospital. (PSR ¶ 17.)  
22 Defendant drove on the sidewalk before surrendering. (PSR ¶ 23.)

23 Before that, defendant was convicted of carrying a loaded  
24 firearm (PSR ¶ 59), an earlier bank robbery in which the teller saw  
25 the butt of a handgun in defendant's waistband (PSR ¶ 71-73), and  
26 possession of cocaine with intent to distribute (PSR ¶ 64). When  
27 the police executed the search warrant the resulted in defendant's  
28 cocaine trafficking conviction, they found three handguns. One of

1 the officers was shot in the shoulder by a different occupant of the  
2 same residence. (PSR ¶ 66.) Later, defendant was arrested as a  
3 felon in possession when officers saw him retrieve a handgun from a  
4 hiding place, but he was not prosecuted for this offense. (PSR  
5 ¶ 84.)

6 Defendant is doing well now under the supervision of his  
7 probation officer. Supervision imposes a minimal burden on  
8 defendant, who must do little more than complete monthly reports  
9 indicating whether his employment or address has changed. Defendant  
10 has completed less than two years of his five-year term of  
11 supervision. It is to be hoped that he will continue to do well  
12 under supervision. But given defendant's lengthy history with  
13 firearms and violent crime, it would be unduly risky to terminate  
14 supervised release now. Indeed, defendant has previously been  
15 returned to prison for violating the terms of his federal supervised  
16 release. (PSR ¶ 69.) Accordingly, the Court should deny  
17 defendant's ex parte application for termination of supervised  
18 release without a hearing.

19 Dated: May 11, 2021

Respectfully submitted,

20 TRACY L. WILKISON  
21 Acting United States Attorney

22 BRANDON D. FOX  
23 Assistant United States Attorney  
Chief, Criminal Division

24 */s Andrew Brown*

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ANDREW BROWN  
Assistant United States Attorney

26 Attorneys for Plaintiff  
27 UNITED STATES OF AMERICA  
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CERTIFICATE OF SERVICE

I, Belinda B. Tunque, declare:

That I am a citizen of the United States and a resident of or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of 18 years old, and I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of: GOVERNMENT'S OPPOSITION TO DEFENDANT MONTEZ DAY'S EX PARTE APPLICATION TO TERMINATE SUPERVISED RELEASE service was:

☐ Placed in a closed envelope for collection and inter-office delivery, addressed as follows:

☒ Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows:

☐ By hand delivery, addressed as follows:

☐ By electronic mail delivery, as follows:

**Montez Day  
1936 Fox Hill Dr.  
Indianapolis, IN 46228**

This Certificate is executed on May 11, 2021, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct

